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 12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 OAKLAND DIVISION

15 SECOND WALNUT CREEK MUTUAL,)	Case No.: CV08-2874 CW
16)	
17 Plaintiff,)	[PROPOSED] ORDER GRANTING
18)	DEFENDANTS' MOTION TO DISMISS
19 vs.)	FOR FAILURE TO STATE A CLAIM
20)	UPON WHICH RELIEF CAN BE
21 TRAVELERS PROPERTY CASUALTY)	GRANTED (RULE 12(b)(6))
22 COMPANY OF AMERICA, FEDERAL)	
23 INSURANCE COMPANY and DOES 1)	Hearing Date: August 14, 2008
24 through 20, inclusive,)	Time: 2:00 p.m.
25)	Courtroom: 2
26 Defendants.)	

27 The motion of defendants Travelers Property Casualty Company of America and
 28 Federal Insurance Company, to dismiss the complaint of plaintiff Second Walnut Creek
 Mutual, pursuant to Federal Rule of Civil Procedure 12(b)(6), came on regularly for hearing on
 the 2:00 p.m. calendar on August 14, 2008, in Courtroom 2 of the above-entitled court, located
 at 1301 Clay Street, Oakland, California, the Honorable Claudia Wilken presiding. Michael J.
 Hughes appeared for plaintiffs; Marjie D. Barrows appeared on behalf of defendant Travelers
 Property Casualty Company of America; and Ronald F. Remmel of Newton Remmel appeared
 on behalf of defendant Federal Insurance Company.

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1 Upon having considered the arguments of counsel, both written and oral, and good
2 cause appearing, the Court rules and orders as follows:

- 3 1. Defendants' motion to dismiss plaintiff's Complaint for Breach of Contract,
4 Breach of Implied Covenant Of Good Faith And Fair Dealing, Declaratory
5 Relief And Punitive Damages is granted on the grounds that the complaint fails
6 to state a claim upon which relief can be granted. Defendants' denial of the
7 costs incurred by plaintiff to repair the underground portion of the plumbing
8 system was proper since those costs are excluded under the involved insurance
9 policy, which is attached to the Complaint, and there has been no breach of
10 contract as a matter of law. Furthermore, since the denial of coverage was
11 proper, the facts not support a claim for breach of the covenant of good faith and
12 fair dealing or punitive damages as a matter of law.
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15 DATED: _____

CLAUDIA WILKEN
JUDGE OF THE UNITED STATES DISTRICT
COURT